



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce)**

Date last adopted: **March 6, 1986**

Reviewer: **D. Douglas Titus**

Date review completed: **July 19, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

Rule 175 explains that revenues from business activities of persons operating as private or common carriers of persons or property by air, rail, or water in interstate or foreign commerce are not subject to the business and occupation (B&O) or public utility tax. The rule also discusses the B&O tax deduction for sales of fuel for consumption outside U.S. waters by vessels used primarily in foreign commerce. The rule further explains that retail sales tax does not apply to sales of certain carrier property and component parts, relieving sellers of the obligation to collect sales or use tax if they obtain an appropriate certificate.

2. Need:

YES	NO	
X		Is the document necessary to comply with or clarify the application of the statutes that are being implemented? (E.g., does it provide detailed information not found in the statutes, reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied, etc?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)



Please explain. **This rule provides important tax-reporting information that reduces the need for taxpayers to search multiple statutes or rules to determine their tax-reporting responsibilities.**

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
	NA	Should this ancillary document be incorporated into a rule?
	NA	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affect the information now provided in this document?
	NA	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief explanation of the issue(s).

The information contained in the following excise tax advisories (ETAs) should be incorporated into Rule 175 and the ETAs themselves repealed:

- **ETA 203.08.175 (“Utility boxes” used to ship cargo in interstate commerce)** explains that retail sales tax does not apply to the purchase of utility boxes or containers for cargo used by steamship companies in interstate commerce and that these boxes are “durable goods” used aboard carrier property and exempt from use tax under Rule 175; and
- **ETA 204.08.175 (Purchase and installation of fixtures and equipment on a vessel owned by another)** explains that the exemptions provided by RCW 82.08.030(11) and RCW 82.12.030(4) apply to purchase or use of fixtures which are installed on or in a vessel belonging to another person engaged in foreign commerce.



Information relating to private carriers should be incorporated from the following decision:

- **Weyerhaeuser Co. v. Department of Rev.**, 106 Wn.2d 557, 562-63, 723 P.2d 1141 (1986), held that a seller of goods sold CIF on seller-chartered ships in foreign commerce was entitled to the RCW 82.08.0261 deduction for fuel where the title passes with shipment, making the charter vessel a private carrier for hire (and reversing BTA Docket No. 82-64 below in part on other issues).

Information contained in the following determinations should be incorporated into Rule 175:

- Determination No. 85-308A, and 86-20A, 1 WTD 415 (1986), held that vessels used to haul or tow other vessels laden with goods moving in interstate commerce are included within the scope of statutory use tax exemption; and
- Determination No. 96-031 (1996), 17 WTD 040, held that marine engine cylinder lubricants qualify for the RCW 82.04.433 deduction because they are commercially sold and used as a fuel, but circulatory lubricants do not so qualify.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
	X	Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve?
	X	Do changes in industry business methods warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **The rule as written is generally organized in a clear manner; however, the following changes and additions would make Rule 175 more effective:**

Rule 175 does misquote RCW 82.08.0261 by using “use within this state” instead of “use of such property in this state,” and, although it does not alter the meaning, the quoted language should be conformed to the statute.

The rule should also be:

- **Rewritten in the format currently utilized by the Code Reviser’s Office and the Department;**
- **Revised to eliminate the three lengthy certificates, and to refer taxpayers instead to the Department’s “Buyers’ Retail Sales Tax Exemption Certificate” which can be used to document the tax-exempt nature of the transactions;**
- **Revised to include the information contained in ETA 203.08.175, ETA 204.08.175, and Determination Nos. 85-308A/86-20A and 96-031;**
- **Revised to add language clarifying that assist vessels which do not physically connect with other watercraft do not qualify for the exemption of RCW 82.12.0254;**



- Revised to acknowledge the B&O tax rate for sales to interstate common and private carriers provided in RCW 82.04.250; and
- Revised to include language providing that for a vessel or other conveyance to be engaged primarily in interstate commerce such use must exceed 50% of total use.

The Department should also reexamine the following provisions in Rule 175 (when next revised) to determine if they reflect current law:

- Rule 175's explanation that durable goods used on carrier property both in and out of the state of Washington are exempt from use tax;
- Rule 175's explanation that the cost of installing, repairing, cleaning, altering, imprinting, or improving tangible personal property prior to initial use by the carrier is considered a part of the initial cost of the property and therefore exempt from sales tax; and
- Rule 175's explanation that the use tax does not apply to consumable goods used in Washington but placed on aboard carrier property outside the state.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the information provided in the document consistent with the statute(s) that it was designed to implement ? (If "no", identify the specific statute and explain below. List all statutes being implemented in Subsection 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **This rule was adopted under the provisions of RCW 82.32.300, which authorizes the Department to adopt and publish rules to explain the provisions of the Revenue Act.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The Department of Revenue has the exclusive authority to administer the B&O, retail sales, and public utility taxes in this area.**



7. Cost: When responding, consider only the costs imposed by the document and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?

Please explain. **This document currently results in the equitable treatment of those required to comply with it.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent these statutes apply to taxation of persons operating as private or common carriers by air, rail, or water:**

- RCW 82.04.050 (Defines “sale at retail,” and “retail sale”);
- RCW 82.04.190 (Defines “consumer”);
- RCW 82.04.220 (Business and occupation tax imposed);
- RCW 84.04.433 (Deductions—Sales of fuel for consumption outside United States’ waters by vessels in foreign commerce—Construction);
- RCW 82.08.020 (Imposes tax);
- RCW 82.08.0255 (Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside state in interstate commerce);
- RCW 82.08.0261 (Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce);
- RCW 82.08.0262 (Exemptions—Sales of airplanes, locomotives, railroad cars, or watercraft for use in interstate or foreign commerce or outside the territorial waters of the state or airplanes sold to United States government—Components thereof and of vehicles or trailers used for constructing, repairing, cleaning etc.—Labor and services for constructing, repairing, cleaning, etc.);
- RCW 82.12.020 (Imposes use tax);
- RCW 82.12.0253 (Exempts from use tax personal property exempt from public utility tax); and



- **RCW 82.12.0254 (Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state’s territorial waters—Components. . .).**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 203.08.175 (“Utility boxes” used to ship cargo in interstate commerce)** explains that retail sales and use taxes do not apply to the purchase of utility boxes or containers for cargo used by steamship companies in interstate commerce ; and
- **ETA 204.08.175 (Purchase and installation of fixtures and equipment on a vessel owned by another)** explains that the exemptions provided by RCW 82.08.030(11) and RCW 82.12.030(4) apply to purchase or use of fixtures which are installed on or in a vessel belonging to another person engaged in foreign commerce.

Court Decisions:

- **Weyerhaeuser v. Department of Revenue**, 106 Wash.2d 557, 723 P.2d 1141 (1986), held that Weyerhaeuser qualified as a private carrier for hire in foreign commerce and was eligible for the deduction for fuel (reversing, in part, BTA Docket No. 82-64 below);
- **United Parcel Service v. Department of Revenue**, 102 Wash.2d 355, 687 P.2d 186 (1984), held that RCW 82.12.0254 requires a vehicle to cross state boundaries in order to be eligible for exemption from use tax; and
- **Itel Containers International Corporation v. Huddleston**, 507 U.S. 60 (1993), held that application of Tennessee’s sales tax to leases of cargo containers used in international shipping did not violate the supremacy, commerce, or import-export clauses of the U.S. Constitution.

Board of Tax Appeals Decisions (BTAs):

- **Weyerhaeuser Company v. Department of Revenue**, BTA Docket No. 82-64 (1984), held that a seller of goods sold CIF on seller-chartered ships in foreign commerce was entitled to a deduction for fuel where the title passes with shipment, making the charter vessel a private carrier for hire (reversed in part by the Supreme Court in Weyerhaeuser v. Department of Revenue, 106 Wash.2d 557, 723 P.2d 1141 (1986) above).

Administrative Decisions (e.g., WTDs):

- **Determination No. 96-031, 17 WTD 040 (1996)**, held that marine engine cylinder lubricants qualify for the RCW 82.04.433 deduction because they are commercially sold and used as a fuel, but circulatory lubricants do not so qualify;
- **Determination No. 94-226, 15 WTD 065 (1995)**, held that use tax is not imposed on aircraft if the aircraft, used for both intrastate and interstate commerce, is used more than 50% of the time to transport property or persons for hire in interstate commerce;
- **Determination No. 92-111, 12 WTD 143 (1993)**, held that, by limiting the definition of component part to carrier property, Rule 175 does not provide authority for exempting the sales to a Washington-based interstate carrier of pallets, tarps, or tie downs on trucks or trailers;
- **Determination No. 92-056, 12 WTD 105 (1993)**, held that RCW 82.08.020 imposes sales tax on tangible personal property such as the chemicals sold by the taxpayer in



Washington and that the RCW 82.08.0262 exemption for equipment and component parts used by common carriers in interstate or foreign commerce does not apply to consumable supplies such as cleaning agents and chemicals;

- Determination No. 91-323ER, 13 WTD 039 (1993), held that vessels need not necessarily cross a state or national boundary but must be used as an inseparable part of a continuing interstate or foreign movement of property for hire to be exempt from retail sales tax and use tax; and
- Determination Nos. 85-308A, and 86-20A, 1 WTD 415 (1986), held that vessels used to haul or tow other vessels laden with goods moving in interstate commerce are included within the scope of statutory use tax exemption.

The following determinations refer to Rule 175 only and do not deal with its substantive application:

- Determination No. 99-216E, 18 WTD 264 (1999);
- Determination No. 91-020, 13 WTD 018 (1993);
- Determination No. 91-313R, 12 WTD 045 (1993);
- Determination No. 91-323, 12 WTD 029 (1993) (overruled in part by 12 WTD 045);
- Determination No. 91-128, 11 WTD 327 (1992); and
- Determination No. 88-37, 5 WTD 107 (1988).

Attorneys General Opinions (AGOs):

None

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- RCW 82.04.080 (Defines “gross income of the business”);
- RCW 82.04.290 (Tax on . . . service activities);
- RCW 82.04.250 (Tax on retailers and special rate for sales to interstate private or common carriers);
- RCW 82.04.260(12) (Tax rate for stevedoring and associated activities);
- RCW 82.16.010 (Defines “railroad business,” “express business,” “urban transportation business,” “public service business,” and “tugboat business”);
- RCW 81.16.020 (Imposes the public utility tax); and
- RCW 82.16.050 (Deductions in computing tax).

Rule 175 refers to the following regulations:

- WAC 458-20-119 (Sales of meals);
- WAC 458-20-179 (Public utility tax);
- WAC 458-20-181 (Vessels, including log patrols, tugs and barges, operating upon waters of the state of Washington); and
- WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

The following regulations refer to Rule 175:

- WAC 458-20-117 (Sales and/or use of dunnage);
- WAC 458-20-120 (Sales of ice);



- WAC 458-20-173 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers); and
- WAC 458-20-221 (Collection of use tax by retailers and selling agents).

The following were examined during this review:

- WAC 458-20-178 (Use tax); and
- American Association of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc., 911 F.2d 786 (D.C. Cir. 1990).

10. Review Recommendation:

- ☒ Amend
- ☐ Repeal
- ☐ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

The rule should be amended to incorporate the ETAs identified above and to provide additional information as explained in Section 4. WAC 458-20-179 (Public utility tax), 458-20-180 (Motor transportation, urban transportation), and 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce) all contain information relating to transportation businesses. At such time as Rule 175 is revised, it is further suggested that the pertinent information contained in these additional rules be combined in one rule.

11. Manager action: Date: _____

- ☐ Reviewed recommendation ☐ Accepted recommendation
- ☐ Returned for further action

Comments: